

ORDINANCE NO. 1223

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING INTERIM DEVELOPMENT REGULATIONS RELATING TO DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS AND WITHIN 200 FEET LANDWARD OF SPECIAL FLOOD HAZARD AREAS; MAKING FINDINGS OF FACT; REQUIRING A HABITAT ASSESSMENT OR LETTER FROM NMFS OR FEMA ESTABLISHING COMPLIANCE WITH THE ENDANGERED SPECIES ACT; SETTING A PUBLIC HEARING FOR NOVEMBER 14, 2011, IN ORDER TO TAKE PUBLIC TESTIMONY REGARDING THE INTERIM DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. Federal Emergency Management Agency, et al.*, 345 F. Supp. 2d 1151 (2004), the United States District Court for the Western District of Washington ruled that the Federal Emergency Management Agency ("FEMA") must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region; and

WHEREAS, the as a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, that documented the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales; and

WHEREAS, cities that participate in the NFIP must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option #1 - adopt the FEMA-developed ESA compliant model ordinance; Option #2 - meet FEMA checklist for ESA compliance with current regulations; or Option #3 - permit by permit demonstration of ESA compliance; and

WHEREAS, the City is currently undergoing review by FEMA for Option #2 but that option cannot become effective until the City completes the update of its Shoreline Master Program; and

WHEREAS, until the requirements for Option #2 are met, the City believes that Option #3 best meets the needs of the environment and community. This requires the City to maintain documentation from the applicant obtained from a habitat assessment or Section 7 consultation with NMFS, that demonstrates compliance with the ESA. This documentation is to be maintained by the City with the applicable permit file and available for FEMA review upon request; and

WHEREAS, because the federal requirement took effect September 22, 2011, the Gig Harbor City Council has therefore determined that an emergency exists which necessitates that this ordinance be enacted as an interim development regulation on an emergency basis in order

to preserve the public health, safety, and welfare and to avoid vesting of development applications that are contrary to the provisions of this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as the Gig Harbor City Council's findings in support of the interim development regulations imposed by this ordinance. The Gig Harbor City Council may, in its discretion, adopt additional findings after conclusion of the public hearing referenced in Section 3 below.

Section 2. Interim Development Regulations.

A. Definitions.

1. "Biological Opinion" means that certain opinion issued by the National Marine Fisheries Service on September 22, 2008, recommending changes to the implementation of the National Flood Insurance Program in order to meet the requirements of the Endangered Species Act in the Puget Sound watershed.

2. "Biologist, qualified" means a person who possesses a bachelor's degree from an accredited college in biology, a branch of biology, limnology, biometrics, oceanography, forestry or natural resource management, with experience preparing reports for the relevant type of habitat.

3. "Endangered Species Act" or "ESA" means 16 U.S.C. 1531 *et seq.*, as amended.

4. "Habitat Assessment report" means a report prepared by a qualified biologist that assesses the proposed development and identifies potential impacts, required mitigation, and whether or not the development adversely affects water quality, water quantity, flood volumes, flood velocities, spawning substrate and/or floodplain refugia for listed salmonids under the requirements of the Endangered Species Act.

5. "Likely to Adversely Affect" or "LAA" means the effects of the development will result in short- or long-term adverse effects on listed species or designated habitat area.

6. "May Affect, Not Likely to Adversely Affect" or "NLAA" means the effects to the listed species or designated critical habitat are insignificant and/or discountable.

7. "No Effect" or "NE" means the development has no effect whatsoever to the listed species or designated critical habitat.

8. "Riparian Buffer Zone" includes all parcels located within 200 feet landward from the +9 elevation (NGVD 1929 datum).

9. "Special Flood Hazard Area" or "Area of Special Flood Hazard" has the same meaning as set forth in GHMC 18.10.040(C) and as determined under GHMC 18.10.050(B).

B. Habitat Assessment Required. In addition to the requirements set forth in chapter 18.10 GHMC, if applicable, and other applicable development regulations in the Gig Harbor Municipal Code, no development permits may be issued on any parcel partially or fully within the Special Flood Hazard Area or Riparian Buffer Zone unless the Planning Director or designee, after review of a Habitat Assessment report provided by applicant, has determined the development meets the standards of NE or NLAA, or the applicant submits a letter from the National Marine Fisheries Service ("NMFS") or the Federal Emergency Management Agency ("FEMA") stating that the development complies with the requirements under the Biological Opinion and the ESA.

C. Process. The Planning Director or designee shall review the Habitat Assessment Report to determine whether the development meets the standard of NE, NLAA or LAA. If the Planning Director or designee determines that the development is LAA, then the City may not issue the development permit unless the development is redesigned to a point where the assessment is NLAA or NE. If a development cannot be redesigned to meet the standard of NLAA or NE, the development may only be permitted if the applicant submits a letter from NMFS or FEMA demonstrating concurrence through a consultation under Section 7 or 4(d) of the ESA or issuance of an incidental take permit under Section 10 of the ESA. The Habitat Assessment and/or concurrence letter from NMFS or FEMA shall be retained in the permit file.

D. Exemptions. The following development is exempt from the requirements set forth in Section B above:

1. Repair or remodel of an existing building in its existing footprint, including buildings damaged by fire or other casualties;
2. Removal of noxious weeds;
3. Replacement of non-native vegetation with native vegetation;
4. Lawn and garden maintenance;
5. Removal of hazard trees;
6. Normal maintenance of public utilities and facilities; and
7. Restoration or enhancement of floodplains, riparian areas and streams that meet federal and state standards.

Section 3. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council hereby sets a public hearing for November 14, 2011 at 5:30 p.m. or as soon thereafter as the matter may be heard in order to take public testimony on the amendments adopted by this ordinance. The City Council may, in its discretion, adopt additional findings justifying the interim development regulations after the close of the hearing.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. Copy to Commerce Department. Pursuant to RCW 36.70A.106(3), the City Clerk is directed to send a copy of this ordinance to the State Department of Commerce for its files within ten (10) days after adoption of this ordinance.

Section 6. Effective Period for Interim Regulations. The interim development regulations adopted by this ordinance shall remain in effect through March 25, 2012, and shall automatically expire unless the same are extended as provided in RCW 36.70A.390 and

RCW 35A.63.220 prior to expiration, or unless the same are repealed or superseded by permanent regulations prior to expiration.

Section 7. Declaration of Emergency. The Gig Harbor City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare.

Section 8. Publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

Section 9. Effective Date. This ordinance shall take effect immediately upon passage by a majority vote plus one of the entire membership of the Council, as required by RCW 35A.12.130.


PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 26th day of September, 2011.

CITY OF GIG HARBOR



Mayor Pro Tem Jim Franich

ATTEST/AUTHENTICATED:



Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Angela S. Belbeck

FILED WITH THE CITY CLERK: 09/23/11
PASSED BY THE CITY COUNCIL: 09/26/11
PUBLISHED: 10/05/11
EFFECTIVE DATE: 09/26/11
ORDINANCE NO: 1223